



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**OF KISII**

**CRIMINAL APPEAL 91 OF 2009**

**JOHN MOGESI NJARWA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

The appellant was charged with robbery with violence contrary to **section 296 (2)** of the **Penal Code**. The particulars of the offence were that on the 11<sup>th</sup> day of January, 2009 at Ragana village in Kuria District within Nyanza Province together with others not before court, he robbed **SAMUEL ROBI MARWA** of cash Kshs. 10,200/= and a bicycle make phoenix worth Kshs. 7,000/= and immediately before and immediately after the time of such robbery stabbed the complainant severally on the head and wounded him on the mouth.

After a full trial the appellant was convicted and sentenced to death as by law prescribed. Being aggrieved by the said conviction and sentence, the appellant preferred this appeal. He stated that there was insufficient evidence to warrant his conviction. He alleged that the case against him was based on a grudge that existed between him and the complainant who had been his employer after they had differed. He urged this court to allow his appeal and set him at liberty.

The appeal was opposed by the state through Mr. Kemo, Senior Principal Prosecution Counsel. He submitted that the appellant had been properly recognized by the complainant and two other witnesses.

Briefly stated the prosecution evidence was that on 11<sup>th</sup> January 2009 at about 6.00 p.m. **SAMUEL ROBI MARWA, PW1**, was pushing his bicycle up a hill on his way home. He saw three young men whom he knew and recognized. They stabbed him three times and took his bicycle. He was also robbed of Kshs. 10,200/=. He identified the appellant as the one who robbed him of the said sum.

**Mary Robi, PW2**, and **Margret Robi, PW3**, witnessed the incident. They all recognized the three robbers as the **appellant, Joseph Magesa** and **Wairema**. PW2 and PW3 talked to the appellant and his accomplices and asked them

why they were attacking the complainant.

A report was made to the police at Isebania police station on 12<sup>th</sup> January 2009. **Corporal Njema, PW5**, testified accordingly. **Administration police constable Letrag Elijah, PW4**, testified as to how warrants of arrest for the two named suspects as well as the appellant were issued by Isebania police station. When they went to arrest them the other two suspects ran away and only the appellant was apprehended.

In his short defence, the appellant stated that he used to work for the complainant but they differed. The complainant then caused his arrest.

The appellant was convicted on the basis of evidence of identification by way of recognition. The complainant as well as PW2 and PW3 knew the appellant. That was not denied. PW2 and PW3 saw the appellant and his accomplices attacking and robbing the appellant. The two witnesses even asked the robbers why they were attacking the complainant but they got no response. A report was made to the police promptly and the appellant and his accomplices were properly identified by their names. There was no doubt that the appellant was well known to the complainant and to the two witnesses aforesaid. The robbery took place at 6.00 p.m. when there was still sufficient light to enable the complainant and two ladies see and recognize the appellant.

Evidence of recognition of an assailant is more satisfactory, more assuring and more reliable than identification of a stranger as was held in ANJONONI –VS-REPUBLIC[1980] KLR 59.

Having carefully considered all the evidence on record, we are satisfied that the appellant's conviction was safe. We dismiss this appeal in its entirety.

Dated, signed and delivered at Kisii this 2nd day of February, 2010.

**D.K. MUSINGA**  
**JUDGE.**

**A.O. MUCHELULE**  
**JUDGE.**

**2/2/2010**

A.O. Muchelule, J.

C/I – Bibu

Mr. Kemo for state

Appellant present

**Court:** Judgment read in open court.

**A.O. MUCHELULE**  
**JUDGE.**